

(b) The reply statement may not contain new evidence. It shall only rebut or further explain matters previously raised.

(c) The reply statement need not be notarized or verified. Applicant understands that the oath in the application form applies to all evidence submitted in the application. Separate legal arguments by counsel need not be notarized or verified.

§ 365.123 Applicant withdrawal.

If the applicant wishes to withdraw an application, it shall request dismissal in writing.

Subpart B—How To Oppose Requests for Authority

§ 365.201 Definitions.

A person wishing to oppose a request for permanent authority files a *protest*. A person filing a valid protest becomes a *protestant*.

EFFECTIVE DATE NOTE: At 78 FR 52647, Aug. 23, 2013, § 365.201 was revised, effective Oct. 23, 2015. For the convenience of the user, the revised text is set forth as follows:

§ 365.201 Definitions.

A person wishing to oppose a request for operating authority files a *protest*. A person filing a valid protest is known as a *protestant*.

§ 365.203 Time for filing.

A protest shall be filed (received at the FMCSA) within 10 days after notice of the application appears in the *FMCSA Register*. A copy of the protest shall be sent to applicant's representative at the same time. Failure timely to file a protest waives further participation in the proceeding.

EFFECTIVE DATE NOTE: At 78 FR 52647, Aug. 23, 2013, § 365.203 was revised, effective Oct. 23, 2015. For the convenience of the user, the revised text is set forth as follows:

§ 365.203 Time for filing.

A protest shall be filed (received at the FMCSA, Office of the Associate Administrator for Research and Information Technology, 1200 New Jersey Ave. SE., Washington, DC 20590) within 10 days after notice of the application appears in the FMCSA Register. A copy of the protest shall be sent to applicant's representative at the same

time. Failure timely to file a protest waives further participation in the proceeding.

§ 365.205 Contents of the protest.

(a) All information upon which the protestant plans to rely is put into the protest.

(b) A protest must be verified, as follows:

I, _____, verify under penalty of perjury under laws of the United States of America, that the information above is true and correct. Further, I certify that I am qualified and authorized to file this protest. (See 18 U.S.C. 1001 and 18 U.S.C. 1621 for penalties.)

(Signature and Date)

(c) A protest not in substantial compliance with applicable statutory standards or these rules may be rejected.

(d) Protests must respond directly to the statutory standards for FMCSA review of the application. As these standards vary for particular types of applications, potential protestants should refer to the general criteria addressed at § 365.107 and may consult the FMCSA at (202) 366-9805 for further assistance in developing their evidence.

[59 FR 63728, Dec. 9, 1994. Redesignated at 61 FR 54707, Oct. 21, 1996, as amended at 62 FR 49940, Sept. 24, 1997]

§ 365.207 Withdrawal.

A protestant wishing to withdraw from a proceeding shall inform the FMCSA and applicant in writing.

Subpart C—General Rules Governing the Application Process

§ 365.301 Applicable rules.

Generally, all application proceedings are governed by the FMCSA's Rules of Practice at part 386 of this chapter except as designated below.

EFFECTIVE DATE NOTE: At 78 FR 52647, Aug. 23, 2013, § 365.301 was removed, effective Oct. 23, 2015.

§ 365.303 Contacting another party.

When a person wishes to contact a party or serve a pleading or letter on that party, it shall do so through its representative. The phone and FAX

§ 365.305

numbers and address of applicant's representative shall be listed in the *FMCSA Register*.

§ 365.305 Serving copies of pleadings.

(a) An applicant must serve all pleadings and letters on the FMCSA and all known participants in the proceeding, except that a reply to a motion need only be served on the moving party.

(b) A protestant need serve only the FMCSA and applicant with pleadings or letters.

§ 365.307 Replies to motions.

Replies to motions filed under this part are due within 5 days of the date the motion is filed at the FMCSA.

§ 365.309 FAX filings.

FAX filings of applications and supporting evidence are not permitted. To assist parties in meeting the expedited time frames established for protesting an application, however, the FMCSA will accept FAX filings of protests and any reply or rebuttal evidence. FAX filings of these pleadings must be followed by the original document, plus one copy for FMCSA recordkeeping purposes.

Subpart D—Transfer of Operating Rights Under 49 U.S.C. 10926

EFFECTIVE DATE NOTE: At 78 FR 52647, Aug. 23, 2013, subpart D, effective Oct. 23, 2015. For the convenience of the user, the text of the new subpart follows this subpart.

SOURCE: 53 FR 4852, Feb. 18, 1988, unless otherwise noted. Redesignated at 61 FR 54707, Oct. 21, 1996.

§ 365.401 Scope of rules.

These rules define the procedures that enable motor passenger and property carriers, property brokers, and household goods freight forwarders to obtain approval from the FMCSA to merge, transfer, or lease their operating rights in financial transactions not subject to 49 U.S.C. 11343. Transactions covered by these rules are governed by 49 U.S.C. 10321 and 10926. The filing fee is set forth at 49 CFR 360.3(f)(8).

[53 FR 4852, Feb. 18, 1988, as amended at 67 FR 61820, Oct. 2, 2002]

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§ 365.403 Definitions.

For the purposes of this part, the following definitions apply:

(a) *Transfer*. Transfers include all transactions (*i.e.*, the sale or lease of interstate operating rights,¹ or the merger of two or more carriers or a carrier into a noncarrier) subject to 49 U.S.C. 10926, as well as the sale of property brokers' licenses under 49 U.S.C. 10321.

(b) *Operating rights*. Operating rights include:

(1) Certificates and permits issued to motor carriers;

(2) Permits issued to freight forwarders;

(3) Licenses issued to property brokers; and

(4) Certificates of Registration issued to motor carriers. The term also includes authority held by virtue of the gateway elimination regulations published in the FEDERAL REGISTER as letter-notices.

(c) *Certificate of registration*. The evidence of a motor carrier's right to engage in interstate or foreign commerce within a single State is established by a corresponding State certificate.

(d) *Person*. An individual, partnership, corporation, company, association, or other form of business, or a trustee, receiver, assignee, or personal representative of any of these.

(e) *Record holder*. The person shown on the records of the FMCSA as the legal owner of the operating rights.

(f) *Control*. A relationship between persons that includes actual control, legal control, and the power to exercise control, through or by common directors, officers, stockholders, a voting trust, a holding or investment company, or any other means.

(g) *Category 1 transfers*. Transactions in which the person to whom the operating rights would be transferred is not an FMCSA carrier and is not affiliated with any FMCSA carrier.

¹The execution of a chattel mortgage, deed of trust, or other similar document does not constitute a transfer or require the FMCSA's approval. However, a foreclosure for the purpose of transferring an operating right to satisfy a judgment or claim against the record holder may not be effected without approval of the FMCSA.